

SELECTIVE RETROACTIVITY: CRITERIA FOR DETERMINING THE MOMENT OF DECLARING A LAW NULL AND VOID IN A RUSSIAN ADMINISTRATIVE JUDICIAL PROCEEDINGS**

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Article info

Received –

2022 June 12

Accepted –

2022 September 20

Available online –

2022 December 20

Keywords

Judicial review, retroactivity,
administrative judicial proceeding,
null and void law, retroactive force

The subject. Any legal order is based on a strict hierarchy of normative acts, built according to their legal force. This hierarchy has been ensured by, among other things, exercising judicial review. In Russia, a normative act can be challenged on the grounds that it contradicts laws of greater legal force, except for the Russian Constitution, in the procedure provided for in Chapter 21 of the Russian Code of Administrative Proceedings. In doing so, one of the crucial questions to be decided in the course of judicial review of normative acts is the determination of the moment when a normative act contradicting a normative act of greater legal force ceases to be valid. This temporal aspect is extremely important because it determines whether individuals whose rights have been violated by law enforcement acts (acts involving application of the law) based on a null and void law are entitled to seek judicial relief.

The purpose of the article is to confirm or refute hypothesis about the permissibility of a situation in which unlawful normative act remains valid for a certain time.

The methodology of research includes formal legal analysis and interpretation of the norms of the Russian Code of Administrative Proceedings, decisions of the Russian Constitutional Court and other courts.

The main results, scope of application. This article deals with the criteria used by Russian courts of general jurisdiction to determine the moment from which a normative act becomes invalid. The study summarizes all the available options and analyzes how correctly courts justify their choice of a specific timeline and whether their rulings are consistent with constitutional requirements. Having considered recent Russian case law, the author concludes that the current rules for determining the moment of declaring a law null and void are unsatisfactory since they do not provide clear and unambiguous criteria, guided by which Russian courts could determine the moment a normative act becomes invalid. The Russian Code of Administrative Proceedings only indicates three options: a court may strike down a law from the date of its adoption, from the date a judgment enters into legal force, or from another date determined by the court. As a result, courts can rule on the retroactivity of their judgments in their sole discretion, which significantly increases the risks of selective justice and arbitrary law enforcement practice. The guidelines developed by the Plenum of the Russian Supreme Court is of little help because while offering some criteria, they contain only dispositive rules, which only aggravates the state of uncertainty. The study also shows that Russian courts tend to declare a challenged law invalid only for the future, even though its disqualification from the moment of its introduction would not undermine constitutional values and, at the same time, would lead to a fairer judgment, allowing to safeguard the rule of law and restore the rights violated by a null and void law. Conclusions. The author argues that in any case, new legal rules announced by a court should have retroactive effect if it promotes a legal status of citizens in relations with the Russian state and public authorities. This approach should be taken in cases concerning social grants, pensions, and other social benefits. This approach can also be taken in cases where the state is a losing party in a civil action.

** The reported study was funded by RFBR, project number 19-311-60022.

1. Introduction

Any legal order is based on a strict hierarchy of normative legal acts, built according to their legal force. This hierarchy, among other things, is designed to provide the institution of judicial norm control. In Russia, the verification of a regulatory legal act for compliance with an act having greater legal force (with the exception of the Constitution of Russia) is carried out in accordance with Chapter 21 of the Code of Administrative Proceedings of the Russian Federation (hereinafter – the CAS of Russia).

One of the most important issues to be resolved in the course of norm control is the determination of the moment from which a regulatory legal act that contradicts an act of greater legal force is recognized as invalid. The indicated temporal aspect is extremely important, since it depends on whether persons whose rights are affected by law enforcement decisions based on a vicious normative legal act will be able to achieve their revision, including under new circumstances.

The current CAS of Russia regulates the procedure for determining the moment of recognition of a regulatory legal act as invalid unsatisfactorily, since it does not contain clear regulatory criteria, guided by which courts could determine the moment of loss of legal force by a regulatory legal act. The Code only outlines possible options for judicial response – without specifying in which situations what decision is required to be taken: to recognize a regulatory legal act as invalid from the date of its adoption, from the date of entry into force of the court decision or from another date determined by the court (paragraph 1 of Part 2, paragraph 1 of Part 4 of Article 215 of the CAS of Russia). The explanations given by the Plenum of the Supreme Court of Russia do not save the situation either, because, although they offer some normative guidelines, they are

formulated exclusively dispositively, which only exacerbates the state of uncertainty. So, in particular:

"A regulatory legal act or part of it *may be recognized* (hereafter, my italics – *A.Ch.*) as not valid from the time when they came into conflict with a regulatory legal act having greater legal force. If the contested act was adopted earlier than a normative legal act having greater legal force, it or part of it may be declared invalid from the date of entry into force of a normative legal act having greater legal force, to which it or part of it began to contradict. A contested act adopted later than a normative legal act having greater legal force, to which it or part of it does not correspond, may be recognized by the court as not acting in full or in part from the date of entry into force of the contested act.

If a regulatory legal act was applied before the court decision was made and the rights of citizens and organizations were realized on the basis of this act, the court may recognize it as not valid in full or in part from the date of entry into force of the decision."

As can be seen, the Plenum of the Supreme Court of Russia gives the courts discretion in choosing the moment from which an illegal regulatory legal act is disqualified. In turn, this significantly increases the risks of arbitrary law enforcement and selective justice, which is especially critical for norm-controlled activities.

In this regard, this article proposes to analyze the current procedure for determining the moment of recognition of a normative legal act as invalid, identify the shortcomings of this procedure and propose the most optimal from a constitutional point of view regulatory approaches to solving this issue.

2. Temporal models of disqualification of normative legal acts

Let's consider possible reference points from which a normative legal act can in principle be declared invalid, and analyze how Russian courts motivate the choice of a specific moment with which they associate the loss of legal force by a normative legal act. The fulfillment of this research task will make it possible to understand how correctly the courts exercise the broad discretion granted to them and whether they properly motivate the choice of a specific moment from which a regulatory legal act is recognized as invalid. As it is known, "the circumstances in connection with which the court came to conclusions about the need to recognize the act or part of it as not valid from one time or another should be reflected in the reasoning part of the decision."

2.1. Date of adoption of the regulatory legal act

The courts usually associate the possibility of recognizing a normative legal act or part of it as invalid from the date of adoption with the fact that the disputed act or its provision initially contradicted the act of greater legal force. At the same time, for the sake of completeness, this circumstance is usually accompanied by an argument that the initial disqualification will restore the violated rights of the administrative plaintiff who challenged the legality of the regulatory legal act.

It is important to note that at present such an argument is not so critical, since the Constitutional Court of Russia, reacting to the refusal of courts to review judicial acts based on a vicious normative legal act under new circumstances, with reference to the fact that the act was declared invalid only for the future, ordered to restore the violated rights of administrative plaintiffs "outside depending on the moment from which the contested regulatory legal act is declared invalid. " Making the decision on the recognition of a

regulatory legal act invalid retroactive – at least in relation to administrative plaintiffs – it was due to the fact that the other "devalued [o] would the very right to appeal to the court with an administrative claim, deprived [o] there would be incentives to protect their rights in all ways not prohibited by law ..., would undermine [o] confidence in the judicial system and justice in general, and would also put [o] ... a person [whose right is violated by a controversial regulatory legal act] in an unequal position compared to those who will experience a positive impact on themselves the decision in the future, without making their own efforts to eliminate the illegal regulatory legal act from the legal field." It is noteworthy that the argument about the inadmissibility of depriving litigants of an incentive to seek changes in legal regulation is considered key when deciding whether to extend the results of regulatory changes to them [1, p. 193; 2, 1085-1086].

Further, the courts recognize the normative legal act as invalid from the date of its adoption, if on its basis the "realization of the rights of citizens and organizations" was not carried out. In other words, the act should not actually generate legal consequences. The logic of such decisions is clear, but far from perfect: the courts interpret the possibility of recognizing a normative legal act that was applied and served as the basis for the realization of the rights of citizens and organizations as invalid for the future – as the need to recognize a normative legal act that, on the contrary, was not applied, as invalid from the date of its adoption. Although common sense suggests that in such situations, on the contrary, it is advisable to recognize a normative legal act as invalid for the future, because in the past it did not have a negative effect.

It is impossible not to pay attention to a curious example when a normative legal act was recognized as invalid from the date of its adoption due to the fact that it was adopted in the same wording as the act that was previously

recognized as invalid from the date of entry into force of the court decision. This example shows that the recognition of a normative legal act as invalid from the date of its adoption is necessary in order to ensure that a law-making body is prohibited from overcoming a court decision on the recognition of its act as invalid by re-adopting the same act (part 3 of Article 216 of the CAS of Russia). The impossibility in such a situation to recognize a normative legal act as invalid from the date of its adoption would open up scope for abuse and create prerequisites for denying the binding nature of judicial decisions.

Some courts associate the possibility of recognizing a normative legal act as invalid from the date of its adoption with a limited period of its validity. In particular, we are talking about acts in which certain elements of taxation are established, and therefore the moment of loss of legal force by the act is linked to the beginning of the relevant tax periods.

Important clarifications regarding the possibility of recognizing a regulatory legal act as invalid from the date of its adoption are contained in paragraph 40 of Resolution No. 50 of the Plenum of the Supreme Court of Russia dated December 25, 2018, which obliges courts to recognize the act as invalid from the moment of its adoption if there was a violation of the procedure for its adoption and entry into force. Among other things, this applies to regulatory legal acts that: have not passed state registration, despite the fact that such registration is mandatory; have not been published in the prescribed manner; were adopted in violation of competence, etc. Guided by these provisions, the courts recognize normative legal acts adopted in violation of the rule-making procedure as invalid from the date of adoption, and "regardless of the exercise of the right by a citizen on the basis of these normative legal acts." Consequently, according to the position

of the Plenum of the Supreme Court of Russia, the violation of the procedure for the adoption of a normative legal act in itself entails its nullity.

Finally, the courts recognize a normative legal act as invalid from the date of its adoption, when the contested act becomes invalid at the time of consideration of the case. This position is probably explained by the desire to avoid violating legal logic: it makes no sense to declare invalid something that is no longer valid.

2.2. The date when the contested regulatory legal act came into conflict with an act of greater legal force

There are two separate situations in this category. On the one hand, there may be a situation where the disputed normative legal act was initially legitimate, but lost its right to exist due to the publication of a normative legal act of greater legal force, which contains provisions incompatible with the disputed normative legal act or its separate provisions. In such situations, the starting point, of course, will be the moment when an act of greater legal force begins to take effect. In principle, the Plenum of the Supreme Court of Russia also focuses on this, noting that "if the contested act was adopted earlier than a normative legal act having greater legal force, it or part of it may be declared invalid from the date of entry into force of a normative legal act having greater legal force, to which it or part of it began to contradict".

On the other hand, it is possible that a regulatory legal act of lesser force is adopted later than a higher act. Then, according to the Plenum of the Supreme Court of Russia, disqualification is permissible "from the date of entry into force of the contested act."

Thus, we see that the Plenum of the Supreme Court of Russia distinguishes between the moment of adoption of a normative legal act and the moment of its entry into force. However, is this of fundamental importance for norm-controlled activities? It seems that since a

regulatory legal act entails legal consequences only from the moment it begins to take effect, there is no particular difference whether the act is recognized as invalid from the date of its adoption or from the date of entry into force.

2.3. Date of entry into force of the court decision

In the practice of norm-controlled activities carried out through administrative proceedings, the most common approach is that a regulatory legal act is recognized as invalid from the date of entry into force of a court decision. In making the relevant decisions, the courts rely on the third paragraph of paragraph 38 of the Resolution of the Plenum of the Supreme Court of Russia No. 50 of December 25, 2018 and proceed from the fact that the contested normative legal act was applied and the rights and freedoms of citizens and organizations were realized on the basis of its provisions. This approach is found in the vast majority of the analyzed solutions. Let's try to figure out how reasonable this approach is.

Although the Resolution of the Plenum of the Supreme Court of Russia itself does not disclose why it is necessary to adhere to the indicated approach, it can be assumed that this is due to a number of considerations that are summarized by the Constitutional Court of Russia in the Resolution of July 6, 2018 No. 29-P. Recognizing that the possibility of revising judicial acts that have entered into force under new circumstances is not devoid of constitutional grounds, only if the relevant normative legal act is declared invalid from the date of its adoption, the Constitutional Court of Russia indicates that this approach is consistent with its legal positions:

"on giving retroactive effect to judicial acts, taking into account the inadmissibility of arbitrary intrusion into the scope of the principle of stability of judicial acts that have entered into legal force (Resolution No. 7-P of

March 19, 2010), on the applicability to them of the general principles of the law in time, in the space and in the circle of persons (Resolution No. 1-P of January 21, 2010) and on the obligation of courts to act only within the framework of constitutionally determined competence without interfering with the exclusive competence of the legislator and the Constitutional Court of the Russian Federation (Resolutions No. 6-P of April 11, 2000 and No. 1 of January 27, 2004-P), and also does not contradict the decisions of the European Court of Human Rights, focusing on the need to respect the principle of legal certainty and the prevention of unlimited expansion of the grounds for overcoming *res judicata*, which can only be significant violations that indicate improper administration of justice (decisions of July 24, 2003 in the case "Ryabykh v. Russia", of November 18, 2004 in the case "Righteous v. Russia", etc.)".

Of course, the above considerations indicate the need to limit the possibility of reviewing court decisions that have entered into legal force, which are based on an illegal regulatory legal act. Meanwhile, it seems that this position cannot be considered unconditional, because there are situations when there is no threat to these values, which means there are no grounds to tolerate the action of vicious normative legal acts that also violate the rights and freedoms of citizens.

However, before proceeding to the analysis of such cases, it is fundamentally important to look at the situation when the court finds that a conflict between normative legal acts takes place initially, but eliminates the effect of a vicious normative legal act only for the future, from a general legal perspective. What is the meaning of a regulatory model that gives preference to recognizing an illegal regulatory legal act as invalid from the date of entry into force of a court decision – without the possibility of reviewing law enforcement decisions based on this act? In fact, this is

nothing more than a temporary rejection of the strict hierarchy of normative legal acts, since the content of the relevant legal relationship is consciously determined by an act with less legal force, and this is recognized as absolutely legitimate. Of course, this is done to protect constitutional values, primarily the principle of legal certainty, which in this context outweighs the principle of the rule of law. Consequently, if there are no values that would be protected by recognizing a normative legal act as invalid only for the future, then the refusal to give a court decision to invalidate the act retroactive force inevitably violates the principle of the rule of law.

Such a conceptual approach also casts doubt on the justification of the extension of the general principles of the operation of legal norms over time to the results of norm-controlled activities. The fact is that there is a significant difference between ordinary law-making activity and judicial norm-control. When a law-making body recognizes its act as invalid, it is thereby not recognized as a deviation from the regulatory requirements that are mandatory for it, but only exercises its authority in the field of regulatory regulation, while when a court recognizes a regulatory legal act as invalid, it is always stated that the state of legality has been violated. In this sense, if the law-making body, when issuing a normative legal act, did not allow violations of the law, this act could not take place a priori. This key difference makes it more likely that, as a general rule, illegal normative legal acts should be recognized as invalid from the moment of their adoption, if there are no constitutionally significant considerations to preserve their legal force for the period preceding the entry into force of the relevant court decision.

Now let's look at specific examples and try to formulate some normative approaches. It seems that in any case, a normative legal act should be recognized as invalid from the date

of adoption when it comes to an act that worsens the situation of citizens in relations with the state.

For clarity, here is the plot of a recent case. At the end of 2021, an administrative claim was filed with the Sverdlovsk Regional Court to invalidate subparagraph 3 of paragraph 1 of Article 4 of the Law of the Sverdlovsk Region No. 126-OZ of October 29, 2007 "On the provision of state social assistance, material assistance and social guarantees to certain categories of citizens in the Sverdlovsk Region", according to which social benefits are not it can be appointed if the person is registered at the place of residence in another subject of the Russian Federation.

The controversial restriction began to operate in the Sverdlovsk Region on January 1, 2020 and, according to the administrative plaintiffs, from the same day it came into conflict with federal legislation. In particular, according to part 2 of Article 3 of the Law of the Russian Federation of June 25, 1993 No. 5242-I "On the right of citizens of the Russian Federation to freedom of movement, choice of place of stay and residence within the Russian Federation" registration or absence thereof cannot serve as a basis for restriction or condition for the exercise of the rights and freedoms of citizens provided for by the Constitution of the Russian Federation, federal laws, constitutions (charters) and laws of the subjects of the Russian Federation. In addition, part 1 of Article 8 of Federal Law No. 178-FZ of July 17, 1999 "On State Social Assistance" grants a citizen the right to receive social benefits not only at the place of residence, but also at the place of stay. The provision of the regional law blocks this possibility.

By the decision of the Sverdlovsk Regional Court of February 24, 2022, which entered into force on June 22, 2022, subparagraph 3 of paragraph 1 of Article 4 of the Law of the Sverdlovsk Region of October 29, 2007 No. 126-OZ "On the provision of state

social assistance, material assistance and the provision of social guarantees to certain categories of citizens in the Sverdlovsk region" was declared invalid with the moment the court decision enters into legal force. Determining the moment from which the disputed legal provision is invalidated, the Sverdlovsk Regional Court proceeded from the fact that "the disputed legal norm was applied, generating legal consequences."

This decision casts doubt on the constitutionality of the CAS of Russia – to the extent that its provisions make it possible to recognize a normative legal act as invalid for the future only because the disputed act was applied and the rights of citizens and organizations were realized on its basis, thereby blocking the possibility of restoring the violated rights of an indefinite circle of persons to receive social benefits, despite the fact that the recognition of a normative legal act as invalid from the date of the entry into force of a court decision is not required to ensure the principle of legal certainty or the protection of any other constitutional values.

An important premise here is that the recognition of a normative legal act as invalid for the future does not negate its substantive depravity. The Court finds that the normative legal act really contradicts the act of greater legal force, and from the moment of its appearance. But he still considers it permissible for this insignificant act to produce a normative effect, although there are no legal prerequisites for that.

Meanwhile, the principle of the rule of law, by definition, cannot encourage illegal regulatory legal acts. It is no coincidence that the Constitution of Russia obliges everyone to comply with the laws without exception, including state authorities and their officials (Article 15, part 2), and laws and other regulatory legal acts of the subjects of the Russian Federation cannot contradict federal laws (Article 76, part 5). Therefore, in the

absence of constitutionally significant considerations justifying the effect of an illegal regulatory legal act for the period preceding the adoption of a court decision to invalidate it, the disputed act must be declared invalid from the date of adoption. Otherwise, it encourages disregard for the law, generates impunity on the part of public authorities, who are able to easily circumvent the requirements of the law, which ultimately undermines the trust of citizens in the law and the actions of the state.

In favor of giving retroactive effect to a court decision, which invalidates a normative legal act or its provision, on the basis of which social benefits are paid, is evidenced by the fact that social assistance is usually claimed by persons who are in a far from enviable, and sometimes very difficult life situation. This, in turn, obliges the legislator, following the ideas of humanism, to provide the necessary social assistance to those in need. It is significant that in the above case of challenging the law of the Sverdlovsk region, the social rights of low-income families and low-income citizens living alone were restricted.

It is important to note that the Constitutional Court of Russia proceeds from the inadmissibility of giving "retroactive effect to the interpretation of legal norms that worsen the position of a subordinate (weak) parties in a public legal relationship", in particular the position of a citizen in "pension, housing [legal relations], [legal relations] for the provision of security in the order of compulsory social insurance, etc.". It seems that for the sake of completeness, this logic should be continued: if giving retroactive effect to a court decision stating the illegality of a regulatory legal act improves the position of a weak party in a public legal relationship, then this party should be given the opportunity to restore violated rights.

By the way, sometimes you have to hear the argument that the recognition of a regulatory legal act or its provision, which deprived citizens of the right to receive social

benefits, invalid from the date of its adoption will entail unforeseen budget expenses. It is unlikely that this argument can be considered seriously, because, firstly, in the designated situation, the budget, in fact, unreasonably saves money, and at the expense of those who objectively need social assistance. So, it is impossible to talk about attempts to "heat up" the state. Secondly, following this logic, it would be worth giving up the very possibility of compensating for the damage caused by the state, since this always entails spending the budget.

It should also be borne in mind that the possibility of recognizing a regulatory legal act that illegally restricts the payment of social benefits as invalid only for the future does not agree with the constitutional norm guaranteeing everyone's right "to compensation by the state for damage caused by illegal actions (or inaction) of state authorities or their officials" (Article 53 of the Constitution of Russia). The fact is that regulatory legal acts always come from the state and its bodies, and therefore it turns out that the state, by its own regulatory decision (CAS of Russia), allows itself (in the person of the courts) to declare its own illegal regulatory legal act legitimate and generating legal consequences and thereby relieves itself of the obligation to compensate for the damage caused by it the same harm. Meanwhile, one of the manifestations of the principle of the rule of law is the rule on the inadmissibility of extracting benefits from one's illegal behavior [10, p. 303]. Therefore, a State that violates its own rules should certainly bear responsibility for this. This is all the more important in light of the fact that the Constitutional Court of Russia, following the European Court of Human Rights, does not consider giving a judicial decision retroactive force as "a violation of the principle of legal certainty, if it is necessary to ensure fair justice and restore the violated right."

Moreover, the normative refusal to ensure retroactivity of a court decision – when there is no need to protect other constitutional values, including the stability of legal relations – introduces unjustified differentiation into legal regulation. The fact is that at present, the court's decision to recognize a regulatory legal act that initially contradicts an act of greater force, invalid from the date of entry into force of this decision, acts retroactively only with respect to the administrative plaintiff. However, persons who, just like the administrative plaintiff, were subjects of legal relations mediated by a vicious regulatory legal act, but who did not challenge its legality in accordance with Chapter 21 of the CAS of Russia, are automatically deprived of the opportunity to restore their rights: a law enforcement decision based on an illegal regulatory legal act will still be considered legitimate, since the vicious act retains its effect for the appropriate period of time.

In this context, it is important to take into account that hypothetically, before the entry into force of a court decision recognizing a normative legal act as invalid for the future, citizens could use such a way of protecting the right as refusing to apply the provisions of an act that contradicts an act of greater legal force (part 2 of Article 120 of the Constitution of Russia, part 2 of Article 11 of the CPC of Russia, part 2 of Article 13 of the APC of Russia, part 2 of Article 15 of the CAS of Russia, part 2 of Article 7 of the CPC of Russia) . And the courts had the right to agree with such an argument, recognizing the relevant law enforcement decisions as illegal. However, from the date of entry into legal force of the court decision in the case of challenging the normative legal act, this possibility is completely blocked. As a result, a paradoxical situation arises when a court decision designed to protect rights and freedoms, on the contrary, begins to have a law-limiting effect. Why can't citizens who have suffered from an illegal law enforcement decision rely on an act of greater legal force and

restore the violated right within the limitation period? This is all the more strange in light of the fact that the Plenum of the Supreme Court of Russia rightly points out that when choosing the applicable norm, "regulatory acts of any state or other body are subject to assessment from the point of view of compliance with the law."

From the point of view of the constitutional principle of equality, such a difference in treatment does not stand up to criticism. Due to the fact that legal regulation in the field of social security is targeted, as a rule, we are talking about the rights of persons who belong to the same category and are in a comparable life situation. Nevertheless, these persons are forced to pointlessly undergo the adverse effects of an illegal regulatory legal act. It seems that there are no objective and reasonable justifications for such a differentiated approach, which means that it is discriminatory.

To demonstrate that the problem of retroactivity is particularly acute in legal relations related to social security, let's give another example. Thus, in the Amur Region, a regulatory legal act regulating the payment of superannuation pensions to persons who held municipal positions was contested. Doubts about the legality of this act arose due to the fact that the pension amount was set without taking into account the length of service and the average monthly salary for the position being filled, with which the court eventually agreed:

"Federal and regional legislation establishes that the maximum amount of a pension for years of service is subject to calculation based on the amount of monetary support for the position held by the person he replaced and the length of his service experience. However, the contested normative legal act established the calculation of the maximum pension amount for years of service without taking into account the criteria

mentioned above, limiting itself only to the establishment of a single fixed maximum pension amount for all persons who filled municipal positions, effectively excluding the application of the contested Provision of the mechanism for calculating the amount of pension for years of service provided by the same norm."

Nevertheless, the regulatory legal act was declared invalid only for the future, as a result of which the affected pensioners will not be able to count on compensation for the lost amounts.

Of course, the cases are not limited to regulatory legal acts in the field of social security. Quite often, one can find solutions in which the recognition of a normative legal act as invalid only for the future is justified by the need to "implement the principle of ensuring the stability of civil legal relations." Of course, this value is important, but it is not absolute either. Retroactivity of a court decision in a case of challenging a normative legal act is in some cases permissible in civil legal relations.

A good example is a case in which the basic rental rate established in the Karachay-Cherkess Republic for land plots occupied by agricultural objects and intended for agriculture was disputed. This rate was equal to 4 rubles per 1 m² and, as it turned out, was set by the Government of the Karachay-Cherkess Republic arbitrarily, without proper economic justification and in violation of the rules for determining rent when renting land plots owned by the state or municipal. Having agreed with the administrative plaintiff, the Supreme Court of the Karachay-Cherkess Republic declared the normative legal act invalid.

Determining the moment from which the act is invalidated, the court found that the disputed regulations were applied when concluding lease agreements, the tenants of which were two other citizens, and therefore recognized the regulatory legal act as invalid from the date of entry into force of the court

decision. And this is despite the fact that in its decision the court explicitly states that the disputed normative provision "violates the rights of citizens, including the administrative plaintiff."

In the given example, of course, we are talking about civil legal relations. At the same time, the court did not take into account that the state is the recipient of the rent and that the retroactive effect of the decision to recognize the regulatory legal act as invalid, leading to a reduction in the base rate of rent, does not detract, but on the contrary, protects the rights and legitimate interests of other citizens. Accordingly, in case of unlawful overstatement of the rental rate when renting land plots that are in state or municipal ownership, including in violation of the principle of economic validity, all citizens have the right to count on recalculation.

Fortunately, the Plenum of the Supreme Court of Russia on certain categories of cases provides unconditional retroactivity [13]. So, for example, in the case of invalidation of a regulatory legal act that establishes a regulated price for supplied electric and thermal energy, as well as water and gas, the Plenum of the Supreme Court of Russia proceeds from the fact that "[n]recognition of a regulatory legal act as invalid, including from a date other than the date of its adoption, within the meaning of Article 13 of the Civil Code of the Russian Federation, it is not a ground for refusal to protect civil rights violated during the validity period of this act." Such a premise made it possible to formulate an order according to which if "a regulatory legal act is declared invalid by a court due to an inflated price of a resource, the consumer of the corresponding resource, who has paid its cost in good faith to the supplier of the resource, has the right to collect an overpayment from the latter, including for the period before the court recognizes the regulatory legal act as invalid ..., or to set off this requirement in regarding its

obligations to the supplier ...". This example shows how progressive an approach to the possibility of a retroactive judicial decision can be.

It should be noted that the above approach is sometimes criticized in the literature, noting that allegedly "the Supreme Court of the Russian Federation shifted the burden of damages from a public legal entity that adopted an illegal regulatory legal act to the supplier" [14, p. 131]. In fact, this is not the case, since in the indicated situation there is a restoration of the initially proper position. It is obvious that if the law-making body did not go beyond the legal framework, the supplier would ultimately be in the same economic situation as in the case of giving a court decision on the recognition of a regulatory legal act invalid retroactive effect. In a sense, this resembles restitution, when a return is made to the situation that existed before the violation of the right. In addition, if you think about it, the supplier, in fact, receives an interest-free loan, having the opportunity to dispose of the corresponding funds profitably in the period before the collection of overpayment or offset. Finally, the position of the Plenum of the Supreme Court of Russia is justified by an additional legitimizing factor, expressed in the fact that the supplier is a stronger party in legal relations with consumers.

The importance of this resolution of the Plenum of the Supreme Court of Russia is confirmed by the fact that the courts continue to recognize normative legal acts, which establish inflated standards of payment for housing and communal services, invalid for the future. So, for example, the Krasnoyarsk Regional Court found that the Government of the Krasnoyarsk Territory unlawfully overestimated the standard of consumption of communal heating services for two-storey apartment buildings with walls of stone, brick built before 1999 in the city of Uzhur:

"The fact that the value of the no

indicator in the amount of 254 days for the city of Uzhur is clearly overstated is evidenced by the fact that in accordance with paragraph 5.1.2 of the Code of Rules "SP 23-101-2004. Design of thermal protection of buildings" (approved and recommended for use by the letter of Gosstroy of Russia dated March 26, 2004 No. LB-2013/9) and Table 3.1 "SP 131.13330.2018. A set of rules. Construction climatology. SNiP 23-01-99" (approved by the order of the Ministry of Construction of Russia dated November 28, 2018 No. 763/pr) the duration of the heating period in the city of Uzhur, characterized by an average daily outdoor temperature of 8 °C and below (according to the observations of the weather station in the city of Achinsk), is 233 days. "

At the same time, the Krasnoyarsk Regional Court predictably recognized the contested normative provision as invalid for the future. Therefore, in the absence of explanations set out in paragraph 6 of the Resolution of the Plenum of the Supreme Court of Russia No. 63 of December 27, 2016, citizens living in the city of Uzhur in two-storey apartment buildings with walls of stone and brick built before 1999 could not count on recalculation of the cost of housing and communal services. By the way, two years earlier, the Krasnoyarsk Regional Court made a similar decision regarding the standard of consumption of utilities for heating the same houses, but with walls made of panels, and also recognized the regulatory legal act as invalid for the future.

It should be noted that a rather curious situation arises when choosing the moment of recognition of a normative legal act as invalid due to the presence of a gap in it. At first glance, it seems that the invalidation of something that does not exist anyway is devoid of any meaning. However, as it turns out, in the law-restoring plane, such a decision has tangible practical significance. We will also demonstrate this thesis with a concrete

example.

In the Bryansk region, as in the above case considered by the Amur Regional Court, the normative legal act of the representative body of the municipality, which determines the procedure for the appointment, payment and recalculation of the monthly supplement to the pension to persons who filled municipal positions, was challenged. This act was declared illegal, among other things, due to the presence of a gap in it, expressed in the absence of provisions on the indexation of pensions, the mandatory existence of which follows from acts of greater legal force. And again, in the best traditions of domestic regulatory control, controversial regulations are declared invalid only from the moment the court decision enters into force.

It seems that a normative legal act in the disputed part should be recognized as invalid from the date of its adoption if the gaps found in it are illegal and violate the rights of citizens. Otherwise, it would allow public authorities to violate mandatory requirements with impunity by inaction. At the same time, such an approach seems very appropriate in the context of the fact that "the court has the right to impose on [the law-making body] ... the obligation to adopt a new normative legal act replacing a normative legal act recognized as not valid in whole or in part" if "insufficient legal regulation of administrative and other public legal relations has been identified, which may entail a violation of rights, freedoms and legitimate interests of an indefinite circle of persons ."

For what other categories of cases is it preferable to make a decision on the recognition of a normative legal act as invalid from the date of its adoption? These include all acts that serve as a direct basis for bringing a person to public liability. In particular, we can talk about the laws of the constituent entities of the Russian Federation that establish administrative liability in violation of federal legislation, and not only the Administrative Code of Russia, but also

other regulatory legal acts that have greater legal force. This category also includes laws that worsen the situation of taxpayers, both in terms of bringing to tax liability and in terms of excessive payment of taxes and fees.

In general, the necessary guidelines are given to us by the legal position of the Constitutional Court of Russia, expressed in relation to the possibility of giving retroactive effect to acts of interpretation emanating from the highest judicial instance and entailing the revision of judicial acts that have entered into force. From the constitutional point of view, this is permissible if "the situation of persons subject to tax, administrative or other public liability improves, as well as in exceptional cases in cases arising from civil legal relations, if this is required by the essentially public interests of protecting an indefinite circle of persons or a deliberately weaker party in the legal relationship."

At the end of this section, it is necessary to consider another reason that obliges the courts to recognize a regulatory legal act as invalid from the date of entry into force of the court decision. As follows from the fourth paragraph of paragraph 38 of the Resolution of the Plenum of the Supreme Court of Russia No. 50 of December 25, 2018, for the future it is necessary to disqualify "normative legal acts that, in accordance with Article 125 of the Constitution of the Russian Federation, can be verified in the procedure of constitutional proceedings." Being a clear echo [16, p. 65; 17, p. 41-42] Resolutions of the Constitutional Court of Russia of April 11, 2000 No. 6-P and of January 27, 2004 No. 1-P, which distinguish between the concepts of invalid and invalid normative legal act, this explanation is apparently dictated by the consideration of the inadmissibility of intrusion of courts of general jurisdiction into the sphere of competence of the Constitutional Court of Russia in the implementation of judicial norm control. However, it seems that this explanation is

devoid of reasonable grounds and is subject to exclusion, since the possibility of recognizing a regulatory legal act as invalid from the date of its adoption does not create a designated risk.

As you know, the Constitutional Court of Russia can check normative legal acts only for compliance with the Constitution of Russia, and therefore the verification by ordinary courts of the legality of normative legal acts does not in any way call into question the exclusivity of the powers of the Constitutional Court of Russia to monitor the constitutionality of normative legal acts. At the same time, the recognition of a normative legal act or its part as invalid from the date of adoption does not narrow the scope of a possible constitutional and judicial review.

On the one hand, the Constitutional Court of Russia may declare a normative legal act recognized as invalid by a court of general jurisdiction, subject to action contrary to the latter's decision. Such authority, arising from Article 85 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", allows recognizing a normative legal act as subject to action "as not contradicting the Constitution of the Russian Federation". As practice has shown, the Constitutional Court of Russia, based on this mechanism, is able to revive not only normative legal acts recognized as invalid by courts of general jurisdiction, but even normative legal acts recognized as invalid in the constitutional court proceedings. In other words, the difference between invalid and invalid normative legal acts actually turned out to be illusory.

On the other hand, the Constitutional Court of Russia has the right to check the constitutionality of a normative legal act, for compliance with which the court of general jurisdiction checked an act of lesser legal force and, in view of the discovered contradiction, declared it invalid [18, p. 15]. If the Constitutional Court of Russia by its decision recognizes a normative legal act of greater force

as unconstitutional, then this decision may become a new circumstance entailing a review of the decision of the court of general jurisdiction to recognize an act of lesser legal force as invalid (paragraph 3 of part 1 of Article 350 of the CAS of Russia).

In the end, so that there is not even a hint of denial of the relevant legal position of the Constitutional Court of Russia, the situation when the court recognizes a normative legal act as invalid from the date of adoption can be considered not as a loss of legal force by this act, but as a circumstance that entails the need to reassess the content of legal relations based on a controversial normative legal act. This is fully consistent with the later legal position of the Constitutional Court of Russia, according to which "the consequence of the court's recognition of a normative legal act as invalid is its exclusion from the system of legal regulation, provided that such a court decision is brought to the attention of a wide range of persons in due course ... and the possibility of review in established cases of judicial decisions based on this act".

Finally, the possibility of recognizing a normative legal act as invalid from the date of adoption is important to ensure increased guarantees of the protection of rights and freedoms. This is due to the fact that a controversial regulatory legal act may comply with the Constitution of Russia, but violate the rights of citizens that are provided for by an act of greater legal force, for example, federal law. In this case, the restoration of the rights of citizens violated by an illegal regulatory legal act obviously requires that this act be declared invalid from the date of adoption.

Therefore, it is advisable to exclude the fourth paragraph of paragraph 38 of the Resolution of the Plenum of the Supreme Court of Russia No. 50 of December 25, 2018, which does not allow recognizing a normative legal act as invalid from the date of adoption, if it can become the subject of a constitutional judicial

review. Unfortunately, in judicial practice there are cases when a normative legal act was recognized as invalid for the future only on this basis.

It is noteworthy that in a huge mass of cases, a rare but curious example was found when the court refused to recognize a normative legal act as invalid from the date of its adoption due to the fact that this "will not be able to condition the restoration of violated rights." In the above case, it was about the illegality of renaming the street, in connection with which, as it was established by the court, the administrative plaintiffs and other citizens did not incur "material expenses".

As for how the courts confirm the fact of the application of the contested normative legal act to an indefinite circle of persons, some courts sometimes indicate that the normative legal act could not be applied "based on [its] significance and the date of adoption." Some – directly refer to specific legal relations that arose on the basis of a controversial regulatory legal act. However, in the vast majority of cases, the courts do not provide a special justification.

2.4. Other date determined by the court

The CAS of Russia allows recognizing a regulatory legal act as invalid also from another date determined by the court. Courts sometimes use this opportunity, which in practice leads to sometimes bizarre decisions.

For example, the Kemerovo Regional Court checked the provisions of the Kemerovo Region Law No. 81-OZ of July 9, 2012 "On Certain issues of holding public events". Having stated that the regulatory provisions being checked contradict the requirements of federal legislation from the moment of their appearance, the court nevertheless declared them invalid from November 22, 2019 – from the day when "the administrative plaintiffs were denied approval to hold a public event, that is, from the date of application of the disputed provisions of the regulatory legal act to them."

The court took such a step due to the fact that during the proceedings the contested provisions of the regional law became invalid.

At the same time, considering that the contested provisions expanded the list of places where it is unacceptable to hold public events, and that citizens act as a weak side in legal relations in coordination of a public event with public authorities, it made sense to recognize the normative legal act as invalid in the contested part from the date of its adoption. This is important, because it is possible that from the moment of entry into force and until the court invalidated the disputed regulations could serve as a basis for bringing citizens to administrative responsibility. The temporal parameters chosen by the court unreasonably block the possibility of challenging decisions on bringing citizens to justice between March 2018 and November 22, 2019.

3. Conclusion

The provisions of the CAS of Russia that determine the moment of recognition of a regulatory legal act as invalid need to be clarified and adjusted. It has to be stated that, in violation of constitutional requirements, they allow a situation in which, at least for a limited time, an illegal regulatory legal act is in force in the legal system of Russia, which violates the rights of an indefinite circle of persons, despite the fact that the preservation of the validity of this act is not conditioned by any constitutionally significant considerations. Since an intolerant attitude towards any illegal manifestations should prevail in a State governed by the rule of law, this state of affairs cannot be considered permissible.

The legislator needs to solve this problem. In the event of his inaction, the necessary work can and should be carried out by the Plenum of the Supreme Court of Russia, giving the required explanations in its ruling. Moreover, the urgent nature of the problem is

recognized by the judges themselves, proposing amendments to the CAS of Russia, ordering the courts to recognize a normative legal act as invalid from the date of its adoption and at the same time fixing the prohibition to review decisions based on invalidated normative legal acts if this leads to a deterioration of the citizen's situation [20, p. 35].

It should also be noted that today the courts are endowed with unlimited discretion in choosing the moment from which a regulatory legal act or part of it is recognized as invalid. They can decide this issue arbitrarily, guided, among other things, by non-legal considerations. Meanwhile, increased requirements of legal certainty should be imposed on procedural norms. And this is especially important for regulatory activities that have a direct impact on the system of current legal regulation. This circumstance also indicates the need to promptly make appropriate changes to the CAS of Russia.

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BIBLIOGRAPHIC DESCRIPTION

Chirninov A.M. Selective retroactivity: criteria for de-
termining the moment of declaring a law null and
void in a Russian administrative judicial proceedings.
Pravoprimerenie = Law Enforcement Review, 2022,
vol. 6, no. 4, pp. 162–178. DOI: 10.52468/
2542-1514.2022.6(4).162–178. (In Russ.).